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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**
23 **EASTERN DIVISION – RIVERSIDE**

24 SAVE OUR FOREST ASSOCIATION,
25 INC.,

26 Plaintiff,

27 vs.

28 UNITED STATES FOREST SERVICE,
et al.,

Defendants.

Case No.: 5:24-cv-01336-JGB-DTB
**JOINT REPORT PURSUANT TO
FED. R. CIV. P. RULE 26(f)**

Date: March 10, 2025
Time: 11:00 a.m.
Judge: Hon. Jesus G. Bernal
Courtroom: 1, Riverside Division

Action Filed: June 25, 2024
Trial Date:

1 The Parties jointly submit the following statement pursuant to Federal Rule of
2 Civil Procedural 26(f).

3 **I. STATEMENT OF THE CASE**

4 Plaintiff Save Our Forest Association (“SOFA”) brings this case alleging that
5 the U.S. Forest Service (“USFS”) improperly issued Special Use Permits (“SUPs”) to
6 BlueTriton Brands, Inc. (“BTB”), and its predecessor in interest Nestlé Waters North
7 America (“Nestlé”) allowing the diversion of flow from Strawberry Creek in the San
8 Bernardino National Forest (“Forest”), which are the bases for an alleged continued
9 illegal diversion of water from the Forest.

10 Specifically, SOFA alleges that the USFS failed to comply with the National
11 Forest Management Act (“NFMA”), the Federal Land Policy and Management Act
12 (“FLPMA”), the National Environmental Policy Act (“NEPA”), and the
13 Administrative Procedures Act (“APA”). SOFA seeks an order of this Court
14 declaring that the USFS violated these laws in issuing SUPs in 2018, 2022, and
15 2023,¹ and that the continued diversion of water under the 2023 SUP is also illegal.
16 SOFA asks this Court to vacate the 2023 SUP, order the removal of all diversion
17 infrastructure and restoration of Strawberry Canyon, and enjoin the USFS from
18 taking any action to allow future diversion of water from Strawberry Canyon until
19 such time as the USFS complies with the law.

20 In February 2023, BTB sought a new permit for the existing diversion
21 infrastructure, and in July 2024, the Forest Service denied that application. BTB
22 sought review of the denial in *BlueTriton Brands v. United States Forest Service*,
23 Case No. 1:24-cv-02302 (“*BTB v. USFS*”). SOFA is an amicus in the *BTB v. USFS*
24

25 ¹ The 2018 SUP was executed by the USFS and Nestlé on August 24, 2018 and expired by the terms on its face on
26 August 24, 2021, the 2022 SUP was executed by the USFS and BTB on August 18, 2022 and expired six days later on
27 August 24, 2022; the 2023 SUP was executed by the USFS and BTB on February 21, 2023, and expired on August 24,
28 2023. The USFS denied a new permit application from BTB on July 26, 2024. The USFS permitted BTB to continue to
divert water through January 2025, and since that date, water has continued to be diverted as a result of this Court’s stay
of the 2024 denial.

1 case. On January 13, 2025, the Court granted BTB’s motion for a preliminary
2 injunction, prohibiting the Forest Service from taking action to enforce its denial of a
3 permit to BTB. The case was then stayed pending review of the California Water
4 Resources Control Board’s determination that BTB holds no water rights to certain
5 sources in Strawberry Canyon. SOFA and the Forest Service disagree about the effect
6 that the Forest Service’s 2024 denial and the preliminary injunction in *BTB v. USFS*
7 have on the justiciability of this case.

8 SOFA’s position is that the legal effect of this Court’s stay of the *BTB v. USFS*
9 case is simply to maintain the status quo that existed prior to the denial of which BTB
10 complains. Thus the water of Strawberry Canyon presently is diverted from federal
11 lands pursuant to the 2023 SUP issued by the USFS and the pending application for a
12 new SUP. *Ctr. for Biological Diversity v. United States Forest Serv.*, No. EDCV 15-
13 2098-JGB (DTBx), 2016 U.S. Dist. LEXIS 139309, at *20 (C.D. Cal. Sep. 20,
14 2016)(“*CBD v. USFS*”). The legality of the 2023 SUP, and the sufficiency of the
15 2018 environmental analysis relied upon by the USFS in issuing the 2018-2023
16 SUPs, is precisely what SOFA challenges in this lawsuit, so this lawsuit cannot be
17 mooted so long as the diversion structures remain and water flows through them. As
18 explained below, the Forest Service believes this case is moot.

19 II. SUBJECT MATTER JURISDICTION

20 The Parties disagree on whether this Court has jurisdiction over this case. They
21 agree, however, that if jurisdiction exists, it is under the Administrative Procedure
22 Act, 5 U.S.C. § 706, which provides federal courts with jurisdiction to review and set
23 aside agency actions that are “arbitrary, capricious, an abuse of discretion, or
24 otherwise not in accordance with law.” *Id.* at § 706(2).

25 III. LEGAL ISSUES

26 The legal issues in this case include whether the USFS acted properly under
27 NFMA, FLPMA, NEPA, and the APA, prior to issuing a SUP for water diversion
28

1 infrastructure on the Forest and whether those claims are moot following the SUP's
2 expiration and the Forest Service's denial of BTB's most recent permit application.

3 Substantively, this case is a review of an agency action based upon the Forest
4 Service's administrative records.

5 Procedurally, this case is related to *BTB v USFS*. See ECF No. 21. As discussed
6 above, SOFA and the Forest Service disagree about the effect that the Forest
7 Service's 2024 denial and the preliminary injunction in *BTB v. USFS* have on the
8 justiciability of this case. The state-court case reviewing the California Water
9 Resources Control Board's decision on BTB's rights in Strawberry Canyon is
10 *BlueTriton Brands, Inc. v. Cal. Water Resources Control Board et al.*, Fresno County
11 Superior Court, 23CECG04292 (Feb. 7, 2024).

12 SOFA's position is that a decision in either the BTB state or federal case
13 cannot resolve SOFA's case.

14 Regarding the California State Court case, it is SOFA's position that the now-
15 operative 2023 SUP applies to all diversion points in Strawberry Canyon (Headwater
16 Springs and Cienega Springs), not just those at issue in the SWRCB proceeding (the
17 Headwater Springs). Thus, if the California State Court rules fully in BTB's favor
18 and determines that the SWRCB acted in excess of its jurisdiction and that the water
19 at issue is groundwater, that does not resolve the question of who has the right to use
20 that water. It merely says that the SWRCB is not the proper arbiter of that dispute. If
21 the outcome is in the SWRCB's favor, then that will resolve the issue of state water
22 rights to some extent, making it difficult if not impossible for the USFS to issue a
23 permit to BTB for water from the Headwater Springs. It will not resolve water rights
24 issues permitting diversion from the Cienega Springs, or the myriad other permit
25 issues (e.g., whether BTB showed adequate financial assurances, whether BTB
26 demonstrated compliance with the terms of its prior permit, whether diverting water
27 from the Forest harms natural resources on the Forest).

1 Further, it is SOFA's position that a resolution of BTB's federal case (pending
2 before this Court but stayed presently) would not resolve the declaratory relief sought
3 by SOFA in this case. For example, any resolution of that case would not require this
4 Court to examine the sufficiency of the USFS's 2018 NEPA analysis, upon which the
5 USFS could rely in issuing a permit to another party. BTB apparently agrees that the
6 cases are not entangled as BTB objected to consolidation with this case pending
7 outcome of its stayed case before this Court. *BlueTriton Brands, Inc. v. U.S. Forest*
8 *Serv.*, Case No CV 24-9720 JGB, ECF No. 92.

9 Defendants believe this case is moot because BTB's last Special Use Permit
10 expired by its own terms on August 23, 2023, and BTB's request for a new Special
11 Use Permit to continue its occupancy of the San Bernardino National Forest was
12 denied on July 26, 2024. BTB's pipeline continues to occupy the National Forest, but
13 as a result of this Court's January 13, 2025 order preliminarily enjoining the Forest
14 Service from "tak[ing] any action to enforce the Notice of Denial against BlueTriton
15 or the Nation until this matter is fully adjudicated," Order, *BlueTriton Brands, Inc. v.*
16 *U.S. Forest Serv.*, Case No CV 24-9720 JGB, ECF No. 90, not as a result of any
17 reviewable final agency action by the Forest Service.

18 **IV. PARTIES, EVIDENCE, ETC.**

19 The parties to this case are Save Our Forest Association, Inc. and the United
20 States Forest Service. SOFA has no subsidiaries, parents or affiliates. It is a not-for-
21 profit corporation.

22 SOFA's claims are raised under NFMA, FLPMA, and NEPA and are governed
23 by the APA's principles of review. *Native Ecosystems Council v. U.S. Forest Serv.*,
24 428 F.3d 1233, 1238 (9th Cir. 2005); *Oregon Natural Resources Council Fund v.*
25 *Brong*, 492 F.3d 1120, 1124-25 (9th Cir. 2007). Review will proceed, if at all, based
26 on the Forest Service's Administrative Record. *All. for the Wild Rockies v. U.S.*
27
28

1 *Forest Serv.*, 907 F.3d 1105, 1112 (9th Cir. 2018) (citing *Camp v. Pitts*, 411 U.S.
2 138, 142, (1973)).

3 The Forest Service is currently preparing its Administrative Record for lodging
4 with this Court. USFS agrees to provide SOFA with an index of record contents prior
5 to lodging and no later than February 28, 2025, and the parties will meet and confer
6 regarding any disagreement to the proposed contents. If there is an irreconcilable
7 dispute, SOFA reserves the right to file a motion to complete the administrative
8 record.

9 SOFA has requested that the record include the administrative record for the
10 related case *CBD v. USFS*, which was decided by this Court in 2016, as well as at
11 least portions of the administrative record lodged in the Superior Court of Fresno
12 County in the related *BTB v. SWRCB* case.

13 SOFA also anticipates seeking admission of extra-record evidence.² The USFS
14 relied upon a categorical exemption from NEPA in issuing the 2018 permit, and then
15 managed potential environmental impacts through an adaptive management plan for
16 which there was no public hearing or other formal opportunity for the public to
17 provide the USFS with substantive comments.³ SOFA respectfully requests
18 opportunity to provide this Court with testimony, written or oral from (1) Steve Loe,
19 former biologist for the USFS on the ranger district in which Strawberry Canyon is
20 located, and (2) Greg Allord, retired USGS cartographer who was, among other
21 things, the Chief of the Cartography and Publishing Program for the Water Resources
22

23 ² This Court may consider extra-record evidence “(1) if admission is necessary to determine whether the agency has
24 considered all relevant factors and has explained its decision, (2) if the agency has relied on documents not in the
25 record, (3) when supplementing the record is necessary to explain technical terms or complex subject matter, or (4)
26 when plaintiffs make a showing of agency bad faith.” *Lands Council v. Forester of Region One of the United States*
Forest Serv., 395 F.3d 1019, 1030 (9th Cir. 2004)(cleaned up). In this unique case, SOFA can make a good argument
that each of these exceptions to the general rule against consideration of extra-record evidence applies.

27 ³ SOFA and its allies have submitted dozens of requests under the Freedom of Information Act to obtain the adaptive
28 management plan and correspondence with Nestlé and BTB. However, obtaining these records took months to years.
The public viewed these materials long after impacts were felt or decisions made.

1 Division and the lead specialist for implementing digital mapping of the Ground-
2 Water Atlas of the United States. Defendants believe the record they will lodge with
3 this court is presumed regular and will be sufficient for judicial review. *See Blue*
4 *Mountains Biodiversity Proj. v. Jeffries*, 99 F.4th 438, 444-45 (9th Cir. 2024).

5 The parties have agreed to meet and confer regarding the index, which the
6 USFS will provide to SOFA by February 28, 2025, as well as extra-record evidence.

7 **V. DAMAGES**

8 Only injunctive relief is sought.

9 **VI. INSURANCE**

10 There is no insurance issue in this case.

11 **VII. MOTIONS**

12 The Parties anticipate the possibility of a motion to dismiss under Rule
13 12(b)(1), a motion challenging the Forest Service's Administrative Record, and cross-
14 motions for summary judgment.

15 **VIII. MANUAL FOR COMPLEX LITIGATION**

16 The Parties agree that the procedures of the Manual for Complex Litigation are
17 not necessary.

18 **IX. STATUS OF DISCOVERY**

19 No discovery is anticipated.

20 **X. DISCOVERY PLAN**

21 No discovery is anticipated.

22 **XI. DISCOVERY CUT-OFF**

23 No discovery is anticipated.

24 **XII. EXPERT DISCOVERY**

25 No discovery is anticipated.

26 //

27 //

XIII. DISPOSITIVE MOTIONS

The Parties agree that this case will be resolved on cross-motions for summary judgment, and seek leave of this Court to propose a staggered briefing schedule.

XIV. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

The parties are in open communication. A settlement in this matter is unlikely.

XV. TRIAL ESTIMATE

The Parties agree the matter should be resolved on summary judgment and anticipate at most a half day of oral argument.

XVI. TRIAL COUNSEL

Trial is not anticipated in this case. Counsel on the caption are available to present oral argument at any hearing on motions for summary judgment.

XVII. INDEPENDENT EXPERT OR MASTER

The Parties do not anticipate that this is a case where the Court should consider appointing a master pursuant to Rule 53 or an independent scientific expert.

XVIII. OTHER ISSUES

The Parties request that the Administrative Record be produced in electronic form only, because of the volume. The Administrative Record will be Bates numbered and include a hyperlinked index for ease of reference.

Dated: February 24, 2025

Respectfully Submitted,

By: /s/ Rachel S. Doughty

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2 Dated:

Respectfully Submitted,

3
4 By: /s/ Tyler M. Alexander

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